

Message Text

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EUR/CE : MR. CASAGRANDE (SUBS)

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FM SECSTATE WASHDC

TO AMEMBASSY BERN PRIORITY

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E.O. 11652: N/A

TAGS: CGEN

SUBJECT: JUDICIAL ASSISTANCE: U.S. V. WALTER CHICO
HINES

REF: BERN 649

1. DEPARTMENT HAS RECEIVED LETTER FROM ASST. ATTY. GEN.,
CRIMINAL DIVISION, DEPT. OF JUSTICE, EXPLAINING THAT MR.
VON DESCHWANDEN'S WRITTEN STATEMENT CANNOT BE USED AT TRIAL
UNDER U.S. RULES OF EVIDENCE, AND REQUESTING EMBASSY'S
ASSISTANCE IN EXPLAINING REASONS FOR INADMISSIBILITY TO
FPD IN HOPES OF PERSUADING IT TO ALLOW MR. VON DESCHWANDEN
TO TESTIFY.

2. PERTINENT PORTIONS OF ASST. ATTY. GEN. THORNBOROUGH'S
LETTER ARE QUOTED BELOW (DEPARTMENT REGRETS THIS INFORMA-
TION WAS NOT PROVIDED WITH INITIAL REQUEST):

"DESCHWANDEN'S STATEMENT IS HEARSAY: A STATEMENT OUT OF
COURT BY A DECLARANT WHO IS NOT IN COURT, WHICH IS ADDUCED
TO PROVE THE TRUTH OF THE STATEMENT. THE REASON SUCH A

STATEMENT IS NOT ADMISSIBLE IN EVIDENCE IS THAT ITS
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RELIABILITY CANNOT BE TESTED BY THE PARTY AGAINST WHOM IT

IS TO BE USED. TO TEST THE EVIDENCE IN ANY UNITED STATES JUDICIAL PROCEEDING IS THE ABSOLUTE RIGHT OF THE PARTY AGAINST WHOM IT IS TO BE USED. UNITED STATES COURTS CANNOT RELY ON THE TRUTHFULNESS, RECALL, OR ACCURACY OF ANY PERSON WHO DOES NOT APPEAR BEFORE IT, REGARDLESS OF WHO HE MAY BE OR WHAT POSITIONS HE HOLDS.

"THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION ACCORDS CRIMINAL DEFENDANTS THE RIGHT TO PERSONALLY CONFRONT THE WITNESSES AGAINST THEM. A PERSON CANNOT BE CONVICTED ON ABSENTEE ACCUSATIONS.

"DEPARTMENT OF JUSTICE REQUESTS EMBASSY INFORM GOVERNMENT OF SWITZERLAND THAT THE WRITTEN STATEMENT CANNOT BE USED & THAT THE PRESENCE OF DESCHWANDEN IS ESSENTIAL.. . .

IF GOVERNMENT OF SWITZERLAND EXPRESSES INABILITY TO COMPLY ON THE BASIS OF "REGULATIONS", PLEASE ASCERTAIN THE NATURE AND PROVISIONS OF SUCH REGULATIONS."

3. TRIAL POSTPONED TO 3/29. PLEASE ATTEMPT TO OBTAIN FAVORABLE RESPONSE FROM SWISS SOONEST, SO THAT CONDUCT OF PROSECUTION MAY BE DEVELOPED. KISSINGER

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